IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 49 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

ELECON ENGINEERING CO.LTD.

Appearance:

MR BB NAIK with MR MANISH R BHATT for Petitioner

MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 18/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of the revenue, the Income-tax Appellate Tribunal, Ahmedabad Bench "B" has referred the

following two questions of law for the opinion of this Court in respect of assessment year 1981-82 :-

1. Whether, in law and on facts the assessee is entitled to allowance of technical know-how fees of Rs,7,16,654/- paid to WCW, West Germany ?

2. Whether, in law and on facts the assessee is entitled to allowance of Rs.1,12,30,810/- being payments as technical design fees to foreign collaborators ?

2. The assessee had paid an amount of Rs.7,16,654/being the payment of the third instalment in pursuance of an agreement with WCW, West Germany for providing technical know-how, drawings, designs, documents, manufacturing and commissioning instructions and all other data for manufacture of vehicle gears. The agreement was entered into on December 13, 1978 and was approved by the Government of India on 29.3.1979. The total consideration of DM 4,74,000 was payable in three instalments and the third instalment of Rs.7,16,654/- was paid by the assessee during the year under assessment. The assessee had claimed allowance of the same as revenue expenditure. The assessee had also paid a sum of Rs.1,12,30,810/- as fees for designs, calculations, manufacturing drawings, specifications etc. to Weserhutte, West Germany as per the agreement dated August 6, 1980. This payment was claimed as a deduction for the reason that know-how etc. had been acquired on behalf of another Company by the name of Negveli Lignite Corporation. This Company had paid the amount to the assessee i.e. Elecon Engineering for this know-how and Elecon Engineering had only further paid the amount to the German Company. Hence, the assessee had claimed that it is only an intermediary and, therefore, the payment to WAG was deductible in the computation of its total income. Both the claims were rejected by the ITO but upheld by the CIT(A) and Tribunal.

3. We have heard the learned counsel for the parties. In CIT vs. Sayaji Iron & Engg. Co. Ltd., (1994) 210 ITR 950, the Division Bench of this Court has held that improvisation by acquisition of blue prints, drawings, technical know-how, etc. from the foreign collaborators in some areas of enterprise of the assessee is supplemental to the existing business and as this acquisition does not amount to a new or fresh venture, the assessee is entitled to allowance as revenue

expenditure. Again in CIT vs. Suhrid Geigy Ltd., (1996) 220 ITR 153, the Division Bench of this Court has taken a view that where expenses are incurred in areas which supplement the existing business and are not a fresh or new venture and the agreement for acquiring technical know-how pertains to a product already in the line of the established business and is intended to improve the operations of the existing business, its efficiency and profitability in the area of day-to-day business of the assessee's established enterprise, the expenses must be treated as revenue and not capital.

In view of the principle laid down in the above referred to two decisions of this Court, we are of the opinion that the assessee is entitled to allowance of technical know-how fees of Rs.7,16,654/- paid to WCW, West Germany as revenue expenditure. Question No. 1 referred to us is, therefore, answered in the affirmative i.e. in favour of the assessee and against the revenue.

4. So far as question No. 2 is concerned, we find that know-how was acquired by the assessee on behalf of another Company by the name of Negveli Lignite Corporation. This Company had paid the assessee Company for this know-how and the assessee had further paid the amount to the German Company. The know-how was never utilized by the assessee. Therefore, in our view, the assessee is entitled to the allowance of Rs.1,12,30,810/- being payments as technical design fees to foreign collaborators. Question No. 2 is answered in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

sundar/-